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Measures to eliminate international terrorism

Letter dated 23 June 2010 from the Permanent Representative of Pakistan to the United Nations addressed to the Secretary-General

I have the honour to transmit the letter of H.E. Makhdoom Shah Mahmood Qureshi, Foreign Minister of Pakistan, dated 14 June 2010 (see annex). The letter, along with its enclosure, may be circulated as a document of the General Assembly under agenda item 106.

(*Signed*) Abdullah Hussain **Haroon**
Ambassador and Permanent Representative

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Annex to the letter dated 23 June 2010 from the Permanent Representative of Pakistan to the United Nations addressed to the Secretary-General

I have the honour to forward herewith the comments/observations of the Government of Pakistan on the report of the Commission of Inquiry on Mohtarma Benazir Bhutto (S/2010/191) (see attachment).

It is requested that the present letter and its attachment be circulated as a document of the General Assembly.

(*Signed*) Makhdoom Shah Mahmood **Qureshi**

Attachment

Comments and observations of the Government of Pakistan on the report of the United Nations Commission of Inquiry on the assassination of the former Prime Minister of Pakistan, Mohtarma Benazir Bhutto

1. The Government and the people of Pakistan extend their appreciation for the work done by the Commission, which certainly will provide the authorities in Pakistan a basis to commence a serious and credible criminal investigation against those who planned and executed the assassination and to bring them to justice.

2. However, the Government of Pakistan also wishes to avail itself of this opportunity to invite the attention of the Secretary-General to certain concerns that it is necessary to bring forth in respect of the report and which are explained in the following three parts.

Part I

3. Paragraph 2 (c) of the terms of reference of the Commission of Inquiry (see S/2010/191, enclosure, annex) allowed the Commission access to all sources of information, including documentary material and physical evidence, freedom to interview representatives of governmental, as well as other institutions, and to any individual whose testimony was necessary, whereas paragraph 3 of the terms of reference allowed the Commission to approach third States with a request for cooperation in the collection of material or information relevant to the case. Information about such sources, material or information should be made part of the report for its true comprehension for all purposes. The Commission should have not only given more time to the Government of Pakistan to arrange cooperation with third States, as requested by the Government of Pakistan, and the Commission should have not only itself made efforts in this regard, but should have also extended the date for the finalization of its report, since such evidence may have had significant bearing on the ultimate findings of the Commission.

4. This lack of source attribution leads to vagueness and ambiguity in some parts of the report, which has undermined its credibility as a fact-finding report. Similarly, the Commission did not mention the procedural yardsticks by which it had tested the documents, materials or information before their incorporation in the report. They ought to have been added in order to give greater weight to the findings in the report. While we appreciate the need for discretion when dealing with sensitive issues, undue confidentiality about disclosure of different sources of information, including evidence both documentary and oral, undermined the overall value of the report in terms of its reliability.

5. The Government of Pakistan is taking necessary steps to investigate the assassination of Mohtarma Benazir Bhutto in a credible manner. However, keeping in view the contents of the report, the following deficiencies are pointed out with relevant observations in this regard, which impaired the credibility of the report as a fact-finding report and which could have been relied on otherwise for further criminal investigations:

(a) The Commission neither mentioned the names of the persons interviewed by it nor included such names as part of the report for use by investigators in Pakistan;

(b) The report does not mention documentation and the accessibility of those documents prepared on the basis of oral, recorded (audio) or circumstantial evidence examined by the Commission;

(c) The report does not provide any information about persons whom the Commission intended to examine or interview but could not do so, with the reasons for such failure;

(d) The report lacks procedural details regarding the manner and method of interviewing persons or witnesses by the members of the Commission, that is, whether it was individually or collectively;

(e) There is no indication or mention about persons or any list of persons who were interviewed outside Pakistan;

(f) The report does not provide any information about identification and possession of different records or materials examined by the members of the Commission, either inside or outside Pakistan;

(g) It is also not mentioned whether the materials, record of documents or documents prepared on the basis of interviews or evidence of individuals are in the possession of the Commission or have been handed over to the United Nations office for recording and preservation for their use in a criminal investigation, if needed in future by Pakistani authorities.

Part II

6. The Government of Pakistan is also grateful to the Commission for documenting a very systematic and sequential arrangement of facts, particularly relating to the day of the occurrence and related events.

7. In addition to the above, the Government of Pakistan has some concerns regarding certain portions of the report of the Commission and observations thereon that relate to matters and issues that, in our judgement, were not strictly within the framework of the terms of reference. The Government of Pakistan is quite sure that there was no intention of the Commission members to influence foreign policy or Pakistan's long-term strategic interests through such observations or comments. It is the understanding of the Government of Pakistan that even if the members of the Commission had dispensed with the said observations, it would not have diminished the usefulness of the said report for our investigations.

8. In this regard, the Government of Pakistan is pleased to make the following observations for the record of the Office of the Secretary-General:

(a) The report states that it remains the responsibility of the Pakistani authorities to carry out a serious, credible criminal investigation and to bring those responsible to justice, a conclusion with which the Government of Pakistan fully concurs;

(b) However, the above objective is difficult to achieve in view of the absence of clarification of certain matters stated by the Commission in its report. Although substantial questions are raised about the security provided to Mohtarma

Benazir Bhutto and the conduct of criminal investigations after the assassination of Mohtarma Benazir Bhutto, no referential information or supporting material on which such questions are based has been indicated. Similarly, the role of different persons is discussed without any proofs or materials which could have been used for further criminal investigations as desired in the report. Such supporting and relevant material would have assisted in fixing responsibility of persons mentioned therein during different stages of the provision of security to Mohtarma Benazir Bhutto or other arrangements which might have saved her life and which is now necessary to determine their due role or inadvertence in performance of their duties;

(c) However, it has been noted with some concern that instead of confining its findings strictly to the determination of "facts and circumstances" of the assassination of Mohtarma Benazir Bhutto, as per the terms of reference provided by the Secretary-General in his letter dated 2 February 2009 (see S/2010/191, enclosure), the members of the Commission of Inquiry have gone on to bring a particular focus on the Pakistan Army (referred to as the "Establishment" or "military high command" at various places in the report). Several comments and observations in respect of the "Establishment" are not stated to have been properly verified, nor is any material referred to in support of the opinion that the members of the Commission arrived at;

(d) To illustrate, section III of the report was given the title "Threats, responsibilities and possible culpabilities", and in that section members of the Commission "assess hypotheses" of the culpability of entities. In a subheading entitled "Threats from the Establishment", the report simply reproduces the belief of an unnamed source that "the Establishment ... was involved in or bears some responsibility for her assassination". No evidence has been provided in the report to support this belief. No material is mentioned. No document is referred to. There are no affidavits. Such an observation, which is unsubstantiated, has an adverse effect on other matters that have no relevancy to the mandate of the Commission;

(e) It is also noteworthy that in many aspects the Commission's report is beyond the ambit of its terms of reference and mandate. In paragraph 216, a superficial judgement accusing the so-called Establishment is based on evidence that is not specific or substantial in value;

(f) It is the sense of the Government of Pakistan that the Commission members, by accepting requests for anonymity of sources without stating justifiable reasons, have not exercised their discretion in conformity with the purpose of preparing the report, which was expected to make a detailed disclosure of the sources and material it relied upon. It is a universally recognized practice that in all fact-finding or inquiry commissions, the sources and necessary evidence, in all details, are brought on record to substantiate findings, which was not done in this case;

(g) Certain observations and discussions in the report have the effect of influencing regional matters, which may affect positions that Pakistan has been taking in certain sensitive bilateral relations.

9. The Commission completely ignored the mandate given to it according to paragraph 3 of the terms of reference, which required the Commission to approach third States with a request for cooperation in the collection of material or information relevant to the case and provision of expert personnel. The Commission

relied upon and tried to establish linkages between some organizations operating internationally or some international sources belonging to third States, such as the British Broadcasting Corporation, Al-Qaida groups or Afghan Taliban belonging to a neighbouring country, that is Afghanistan, authorities of the United Arab Emirates, and the United States Central Intelligence Agency, as mentioned in paragraphs 201, 202, 203, 205, 206, 207, 209, 211 and 219 of the report. All these sources are apparently relevant and the Commission also relied upon information disseminated from these sources, but the Commission did not exercise the power available to it under paragraph 3 of the terms of reference. There was a need that some concerned authorities of such third States should have been interviewed. This was the more so, since letters were written to persons residing in various parts of the world by the Government of Pakistan, information of which was provided to the Commission. The Commission should have made greater efforts to insist that third States provide access for interviews and to their archives or concerned authorities to acquire direct evidence, instead of relying on newspaper or other reports having doubtful evidentiary value.

10. There is a possibility that thorough questioning of international sources might have proved useful in unearthing any international link to Mohtarma Benazir Bhutto's assassination. Individuals located outside Pakistan who have some relevance to the incident and are also equally important in providing some leads to the actual perpetrators and executors of the plan should have been contacted by the Commission itself for interviewing by making greater efforts to do substantial justice. In this connection, it is relevant to mention that the Government of Afghanistan conveyed to the Government of Pakistan that H.E. Mr. Hamid Karzai, President of Afghanistan, was willing to meet the members of the Commission in Kabul on any day before 25 April 2010, which fact was brought to the notice of the Commission. However, the Commission neither met him nor gave any reason in its report for not meeting him.

11. It has been a general observation and assessment of the people of Pakistan that the plot to assassinate a leader of international stature and fame was not possible without planning, executing and financing from international sources in addition to their executors at local or national level, with their possible channels of communication and transfer of funds. Keeping this view in mind, the Commission was empowered to approach third States. The Commission itself mentioned this aspect but thereafter did not provide any further information in this respect. It is a flaw in this fact-finding report of the Commission. This is especially so in terms of the provision of financing, the method and type of communications and the provision of the logistics necessary to carry out the assassination.

12. The Government of Pakistan also expresses its concern that unsubstantiated observations and comments on the Pakistan Army, in particular, have the consequence of affecting the credibility and standing of the Pakistan Armed Forces and thereby adversely affect the morale of its officers and Jawans at a time when they are laying down their lives and fighting against those who have not only waged war against Pakistan but also threaten the peace of the world. The decisive role of the Pakistan Army in reducing the global threat relating to terrorism is appreciated by all States and their leaders.

13. The Government of Pakistan also expresses its reservations on certain observations in the report that imply a nexus between the Taliban and the Pakistan

Army. It is clear from the terms of reference that such an assessment was not within the scope of the work given to the Commission. The Government of Pakistan submits that such formulations undermine the method, manner and commitment of actions undertaken by the Pakistan Army against the terrorists on its soil, which are welcomed domestically and have won wide appreciation and support from the international community as well.

14. Likewise, the excessive discussion on the alleged role of the Inter-Services Intelligence (ISI) and intelligence agencies is carried out at various places in the report, but the same is not supported by any reference or evidence. The report fails to identify the material, documents and specific interviews on which it relies to come to the conclusions regarding the role of ISI. In any case, observations and comments on the history of ISI, its purpose, its past and present role and area of work are extraneous to the purpose of the mandate that the Commission of Inquiry was given. Therefore, the Government of Pakistan feels that the said observations have little relevance to the terms of reference given to the Commission.

15. The Government of Pakistan also considers that while making "assessments" of various hypotheses, the Commission of Inquiry has not exercised its discretion reasonably, as it has devoted disproportionate space to a hypothesis relating to the Pakistan Army and Establishment and intelligence agencies, while neglecting to make exhaustive discussions on other hypotheses.

16. The Government of Pakistan also has some concerns in respect of the report making observations and findings that absolve or hold persons or entities responsible, whereas in the letter of the Secretary-General dated 2 February 2009, it was explicitly mentioned that its mandate shall not be to carry out a criminal investigation.

Part III

17. The Government of Pakistan, in view of the above and without detracting from much of the good work done by the members of the Commission relating to the determination of the facts and circumstances of the assassination of Mohtarma Benazir Bhutto, states its position with regard to the Commission's report as follows:

(a) That comments and observations about the Pakistan Army, ISI or the so-called Establishment, are only the opinions of the members of the Commission. They do not represent authenticated determinations based on any fact or evidence, and the same shall neither form a precedent nor a basis to lend credence to a political position in this regard, in the practice of States and/or that of international organizations;

(b) The Government of Pakistan maintains that any comments, observations or findings given in the report in respect of all matters except those that are directly relevant to the facts and circumstances of the assassination of Mohtarma Benazir Bhutto shall not be viewed as having determined any fact that relates to any matter of foreign policy of Pakistan, neither shall it have the effect of influencing any position that the Government of Pakistan has been adhering hitherto;

(c) The report has a serious flaw because the Commission has failed to approach third States or to provide some reliable information to unearth, if any, international linkages perpetrating, planning, financing or abetting the assassination

of Mohtarma Benazir Bhutto, although there is mention and reliance on such sources belonging to third States. No doubt there were hiccups, and the Commission should have taken more time and effort in this regard, but unfortunately it appears that it paid scant attention to this aspect and instead has tended to focus on internal matters. The international linkages were an important aspect of the mandate of the Commission under paragraph 3 of the terms of reference which remained unfulfilled. This is notwithstanding the fact that due to its United Nations backing, the Commission was in a far better position to carry out this inter-State inquiry owing to its global or international mandate rather than a domestic inquiry team;

(d) Further, the Government of Pakistan wishes to present the clear understanding to the Office of the Secretary-General that the comments and observations so made by the members of the Inquiry Commission in the report, which are not authenticated and referenced, shall not be used or adopted by any State or institution as "facts determined", and in the event that any State or institution makes an attempt to rely on them, then the said reliance shall not hold any credence whatsoever.